

Effectiveness of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Industry Report 2018



About Us

About KelpHR

KelpHR was incorporated in 2013 to provide the best HR solutions to organisations. Over the last 4 years we have 200+ happy clients pan India across various industries with niche offerings:

- ↳ Our flagship offering, **Prevention of Sexual Harassment** at workplace ensures that we are “one stop shop” for organisations to be compliant with the law which came into force in 2013.
- ↳ Our **Learning Process Outsourcing** offering enhances the behavioral skills of the team and supports organisations end to end to achieve their soft skills learning goals.
- ↳ With **Diversity and Inclusion**, we are constantly working with organisations to build a culture of diversity in their DNA that encompasses Gender Sensitization, bridging the gaps between Gen X and Gen Y, everyday Unconscious bias at work and Inclusive hiring for recruiters.
- ↳ Our HR experts specialize in framing your **Company Policies** or rewriting them to match up to the industry best practices while incorporating your corporate values.

About NHRDN

The National HRD Network (NHRDN), established in 1986, a non-profit organisation, is the leading National Apex body of HR professionals committed to promoting the HRD movement in the country and enhancing the capability of human resource professionals to global levels, while simultaneously enabling them to make an impactful contribution in enhancing competitiveness and creating value for Society. Over the past three decades, this institution has been built and mentored by outstanding leaders and committed office bearers who have embraced the mission of creating an unparalleled network of Human Resource professionals who can contribute meaningfully and in a value added manner to the process of organisation and nation building. NHRDN has over 12500 Professional Members and more than 1200 Corporate Institutional Members, with an all-India network of 30 Chapters, and has global linkages with institutions like the Ross Business School, University of Michigan USA, Wharton Business School USA, Fudan University China, and many others.

Definitions and Applicability

Sexual Harassment

The Supreme Court's definition of 'Sexual Harassment' in the Vishaka Judgement is the basis for the PoSH Act's definition as well. 'Sexual Harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

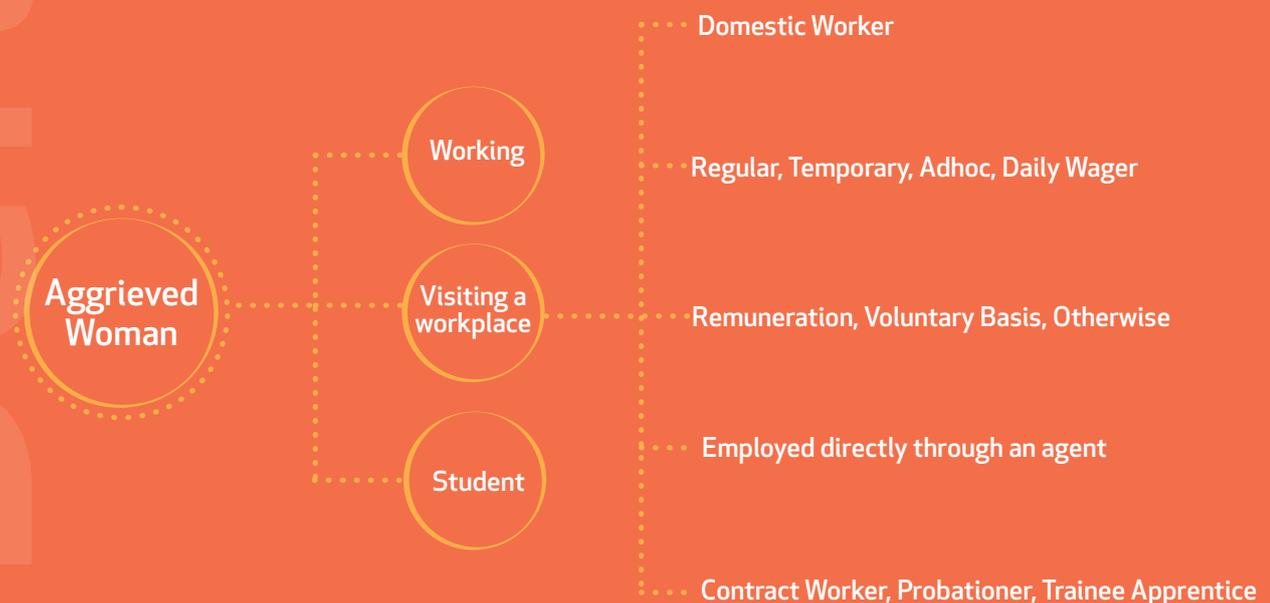
The below behaviour might also be construed as Sexual Harassment-

- ⚡ implied or explicit promise of preferential treatment in employment;
- ⚡ implied or explicit threat of detrimental treatment in employment;
- ⚡ implied or explicit threat about present or future employment status;

Workplace

Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey. It includes office premises, canteen facility, guest houses provided by the organisation, seminars, client or vendor offices etc.

The Act applies to women who fall in any of the below categories.



Brief History on the Act

Vishaka case and Guidelines: Vishaka is the women's rights group that filed a PIL in the Supreme Court of India — the case of Bhanwari Devi vs. the State of Rajasthan in 1997. Bhanwari Devi was employed as “Sathin”, a grassroots worker employed as a part of Womens Development Project run by Govt. of Rajasthan. She was trying to prevent a child marriage that was being held in her native. She was raped by the landlords of the community in order to teach her a lesson. The rape survivor did not get justice from the Rajasthan High Court and the rapists were allowed to go free.

This resulted in the Vishaka guidelines, which dealt with Sexual Harassment of women at the workplace. The verdict defined Sexual Harassment, laid down duties of employers in dealing with complaints and stipulated formation of committees to address complaints from victims of harassment.

Prior to this verdict, the person facing Sexual Harassment at workplace had to lodge a complaint under Section 354 or 509 of the Indian Penal Code (IPC).

On 9th December 2013, the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** came into force. This statute superseded the Vishaka Guidelines for prevention of Sexual Harassment introduced by the Supreme Court of India.

Why should employers be compliant to the Act?

- Avoid impact on company's credibility arising out of non-compliance to Act.
- Provides a safe and secure Work Culture among employees.
- Avoid punishment as per Law: Failure to comply with the requirements can lead to an immediate fine of up to INR 50,000 and further consequences for repeated / continued non-compliance.

An employer can be subjected to a penalty of up to INR 50,000 for:

- ❗ Failure to constitute Internal Committee
- ❗ Failure to act upon recommendations of the Committee; or
- ❗ Failure to file an annual report to the District Officer where required; or
- ❗ Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to:

- ❗ Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- ❗ Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities

4 key steps to be compliant with the Act:

1 Create:

Sexual Harassment Policy in compliance to the Act – detailing the Employee and Employer’s roles and responsibilities; Complaint and Redressal mechanisms.

2 Setup:

The setting up of an Internal Committee as per the guidelines that is equipped to ensure prevention and redressal. IC should resolve complaints after a thorough investigation and recommended actions to be taken.

3 Ensure:

Ensuring awareness among the Internal Committee and Employees by way of training on the Act and on the Complaints and Redressal mechanisms as detailed in the policy.

4 Report:

Statutory reporting of the cases filed, action taken should be reported and filed in the Company’s annual report.

Some observations on what the Act states:

- ❗ Employment rules/ service rules should also be amended to include: Termination or action taken due to Sexual Harassment at workplace based on and in compliance with the Internal Committee (IC) report or findings.
- ❗ Victim has the right to ask for a transfer or leave during pendency of enquiry
- ❗ Per law, there should be an IC formed at every branch of the company in the country, where there are more than 10 employees. The District Officer is required to constitute a Local Committee at each district, and if required at the block level.
- ❗ IC is also applicable for an all-men branch. As even a lady vendor or a lady visitor to the workplace needs to have the option of raising the complaint.
- ❗ IC can also be headed by a Senior male employee in case a Senior woman is not available in a particular branch. But in all, there should be 2 women as part of the IC including the 3rd party NGO representative.
- ❗ The IC is required to complete the inquiry within a time period of 90 days. The IC shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for the purpose of inquiry.
- ❗ Annual Statutory reporting as part of the Annual report that every company files, the number of cases reported and action taken should be published.
- ❗ Sexual Harassment at the workplace is a criminal offence as per the changes made in IPC. So a victim can raise a criminal complaint case as well as a case with the IC and both can run in parallel.

Role of Employer:

- Provide a safe working environment for persons coming in contact with the workplace.
- Create and empower the Internal Committee as defined in the Act.
- Ensure your organisation's Anti-Sexual Harassment policy is aligned with the provisions of the new law.
- Display conspicuously at the workplace, the penal consequences of Sexual Harassment and the composition of the Internal Committee.
- Organise workshops and awareness programmes periodically for sensitizing employees on the Act and organising orientation programmes for members of the Internal Committee.
- Changes to the employment contracts/service rules to make the employees legally bound for the acts of Sexual Harassment at the workplace.
- Submit necessary information pertaining to Sexual Harassment to specified authorities.
- Help your employee to initiate legal action against the perpetrator (if the perpetrator is not an employee) under criminal law.

Role of Internal Committee at the Workplace:

- Shall provide assistance to the victim to make the complaint in writing.
- Complaints need to be filed within 3 months from the last incident occurrence date. IC may extend the time limit by another 3 months.
- Before initiating an inquiry, at the request of the aggrieved woman, IC must take steps to settle the matter through conciliation.
- Shall recommend action during pendency of inquiry like granting leave or transferring either the victim or respondent.
- If IC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required.
- If IC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer:
 - To take action for Sexual Harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.

⚡ To deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.

⚡ If Internal Committee arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or witness or any other person making the complaint has made the complaint knowing it to be false or has produced any forged or misleading document, IC may recommend to the employer or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules or as may be prescribed.

⚡ Shall record the settlement of an inquiry and forward to the employer to take action as per the recommendations.

⚡ Shall share copies of settlement to the victim and respondent.

⚡ Committee to submit annual report in each calendar year and prepare the cases received, disposed, pending and preventive measures during the year and submit the same to the employer and the District Officer.

⚡ The role of the Committee will not be restricted to complaint resolution but will encompass prevention measures as well.

PoSH Annual report filing Simplified

Annual Report filing is becoming a big discussion point at all our Internal Committee meets as there is a lot of ambiguity among HR leaders, Compliance Officers about how to go about it.

As per Prevention of Sexual Harassment Act, 2013, there are 2 reports to be submitted by the employer:

It is the duty of the IC to submit an annual report, which includes the number of cases filed/disposed of every calendar year to the employer and district office.

Section 21 – Internal Committee to submit annual report:

For a copy of the Annual report template and the district officer list, write to us at info@kelphr.com and we would be glad to help!

The employer has a statutory obligation to ensure this report is included in the annual report of the organisation filed to the Registrar of companies.

Section 22 – Employer to include information in the Annual report

As per the Act – “The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.”

The latest Director’s Report submitted under the Companies Act has a section to capture the compliance to the PoSH Act, 2013. This report is filed along with the Annual returns to the Registrar of companies. Unfortunately, many Auditors and Directors are not aware of this latest report or end up filling this section as Nil while submitting this. Director’s report as part of the Annual Report /Annual returns Filing is filed to the Registrar of Companies.



"Headphones? No, those are blinders...He is on probation from HR for constantly ogling our women."

Purpose

It has been close to 5 years since the Act and it is time to look back to see how organisations have worked on preventing Sexual Harassment at the workplace. KelpHR initiated this survey with the premise that while organisations are becoming inclusive and diverse, with more women entering or even re-entering the workforce after a career break, there are still some gap areas when it comes to managing incidents of Sexual Harassment.

The purpose of this survey was to compile an industry report on the "Effectiveness of implementation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" across corporate India.

Survey Focus Group:

The Survey participants will be HR Heads, Internal Committee (IC) presiding officer, HR, Internal Committee members, Legal heads, CXO's of organisations across India. This survey was launched in the month of April 2018 and was closed by May 2018, and was sent to close to 1000 participants. 200 people from 160 companies responded to this Survey.

Survey Outcome:

Through this survey, KelpHR was able to assess how effectively the Act has been implemented by corporate India. The survey also evaluated what are some of the reasons for low reporting of such cases, benefits of the Act and enhancements that are required in the Act.

Disclaimer: This Survey report is based as of May 2018 and the opinion and interpretations shared are purely based on our personal experiences and does not constitute a legal opinion. The contents of this report are privileged and not to be disseminated without prior written permission.

*In some of the graphs, the totals do not add up to 100% as these questions allowed respondents to tick many of the choices.

Key Findings and Insights

 In most organisations, the ownership for PoSH lies with HR. The top leadership involvement seems to be low in terms of ownership. PoSH should be owned by Management and Leadership team as well.

 With the rise of new forms of harassment via the social media and virtual networks of employees, there is a need for better ways to manage incidents that arise.

 Building a strong organisation culture means demonstrating commitment towards creating an equitable and safe workplace through actions. This is the most effective preventive measure and possibly the most under-utilized.

Top 3 Preventive Measures

Building a strong Company Culture

Awareness through multiple means

Effective handling of the cases by IC

Benefits of the Act

91%

believed that the Act has helped in enhancing the awareness

45%

believed that the Act made their workplaces safer

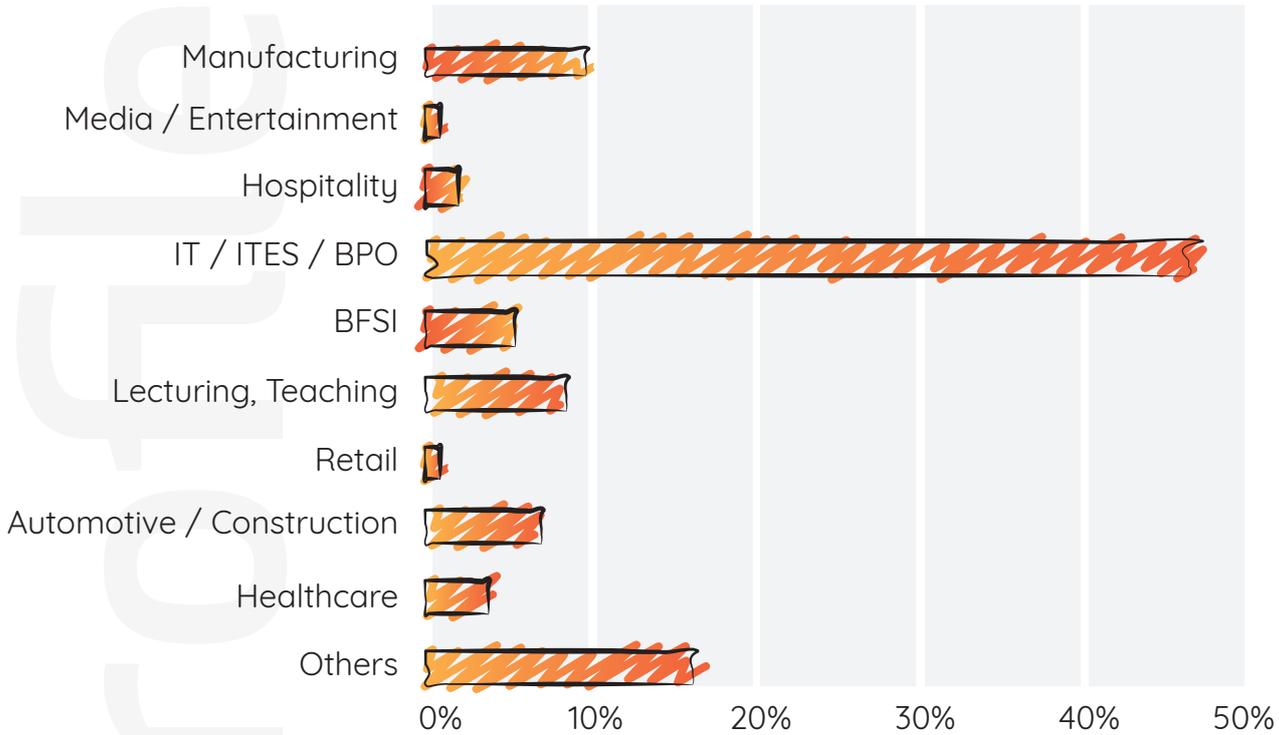
10%

of organisations saw a reduction in attrition.

Enhancements required in the Act

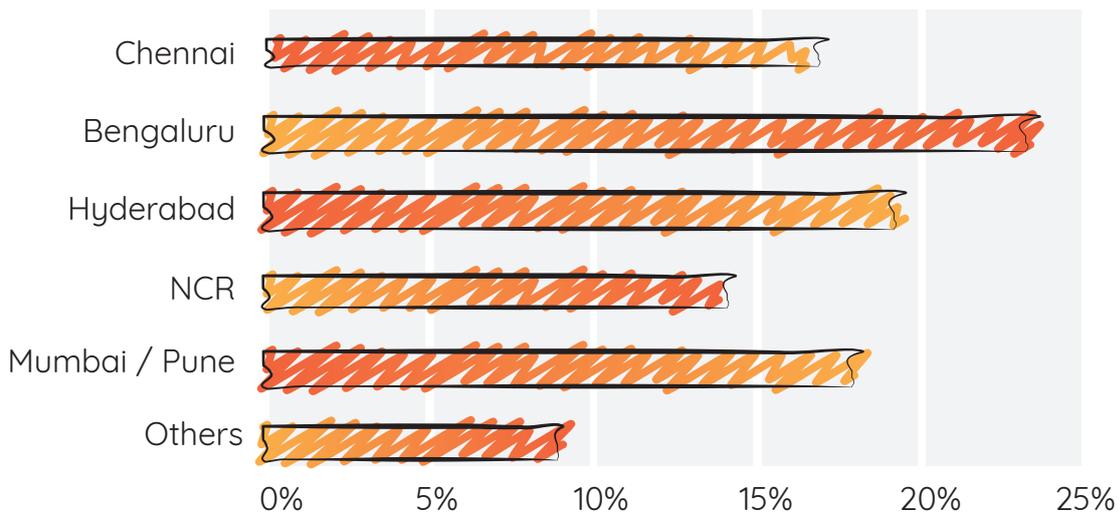
1. Act to be made inclusive and gender neutral for a better buy-in
2. Centralised reporting of incidents will help in better tracking

Participants Profile



Industry

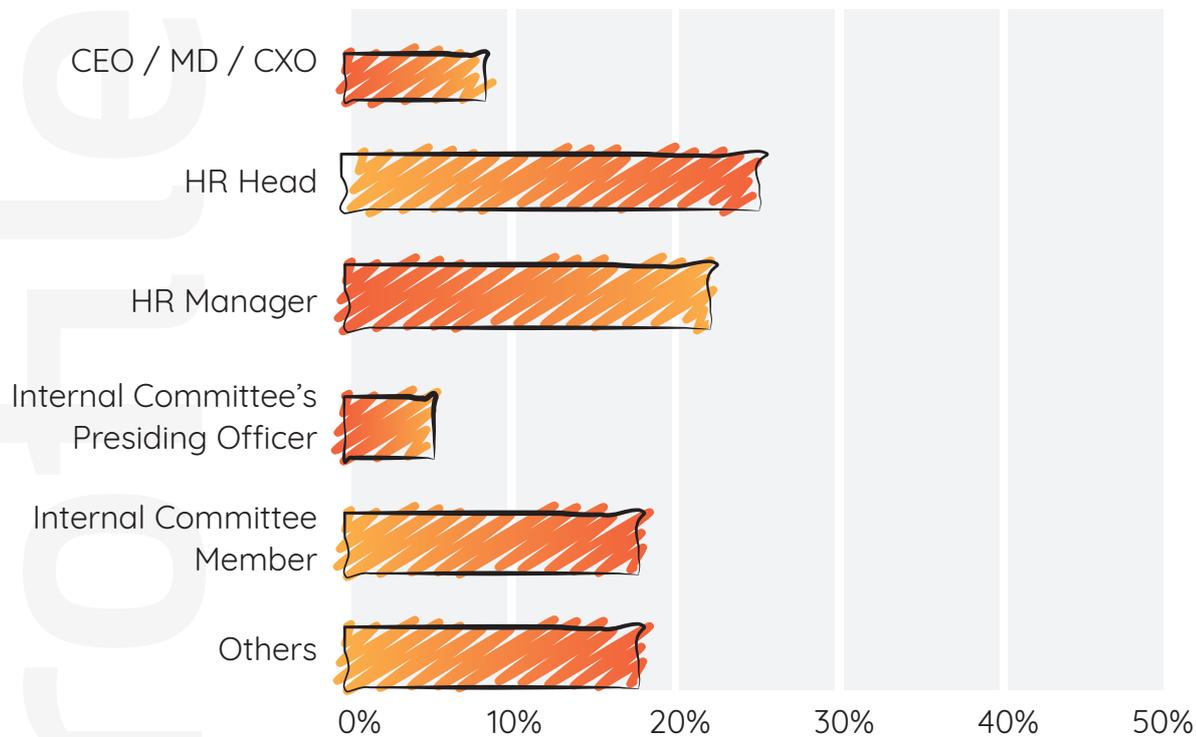
46% of the participants are from the IT/ITes Industry followed by Manufacturing.



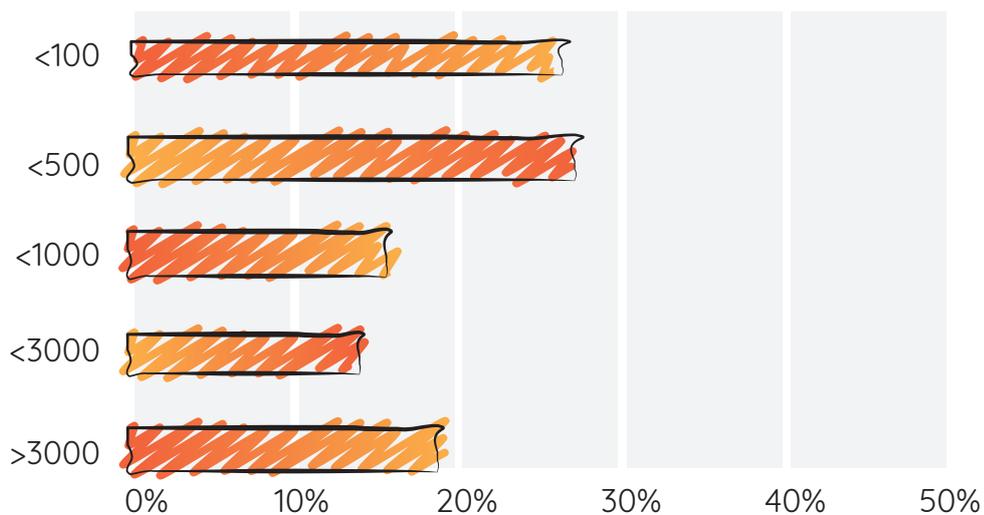
Work Location

The main work locations of the survey respondents are Bengaluru, Hyderabad and Mumbai / Pune.

Participants Profile



HR Head and HR Manager are the roles that are responsible for the information related to PoSH in the organisations.



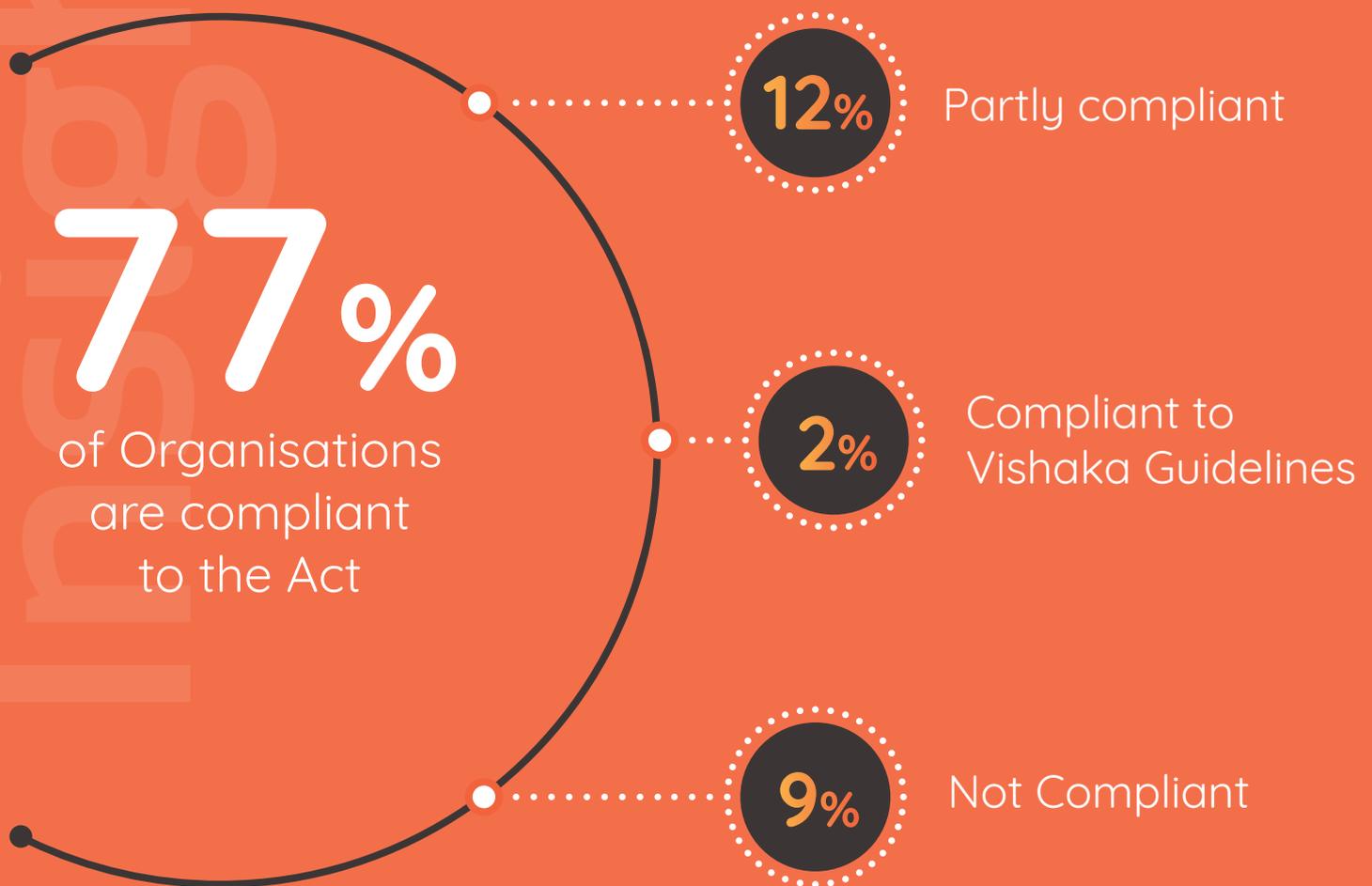
Most organisations in the survey have less than 500 employees.

Role

Number of Employees

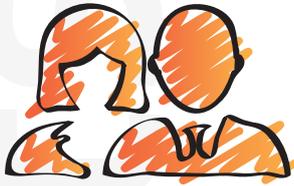
Compliance

Is your organisation compliant to Sexual Harassment Act, 2013?



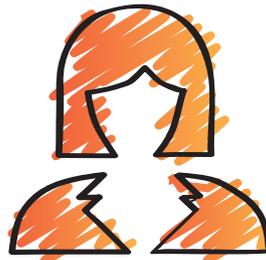
Gender Neutral

Is your Sexual Harassment policy gender neutral?



77.5%

of the organisations have a Sexual Harassment policy which is gender neutral, not only women-centric.



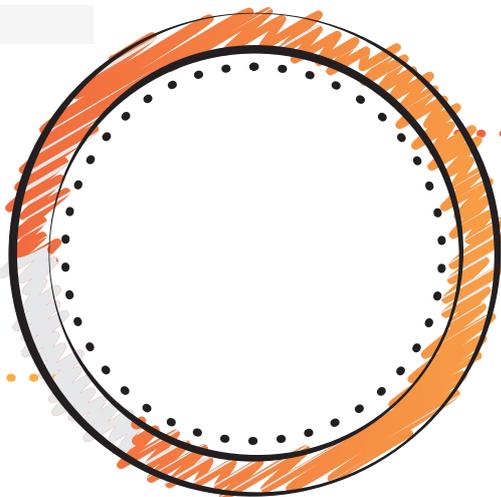
22.5%

Applies only to women employees

KelpHR's opinion:

Companies do not want to be seen as giving preferential treatment to women and are inclusive by involving their male employees in creating a safe workplace. We have noticed Financial Sectors to abide by the regulations and prefer to keep their policy gender specific.

If a Sexual Harassment complaint is raised by a male employee, who will handle it?



80%

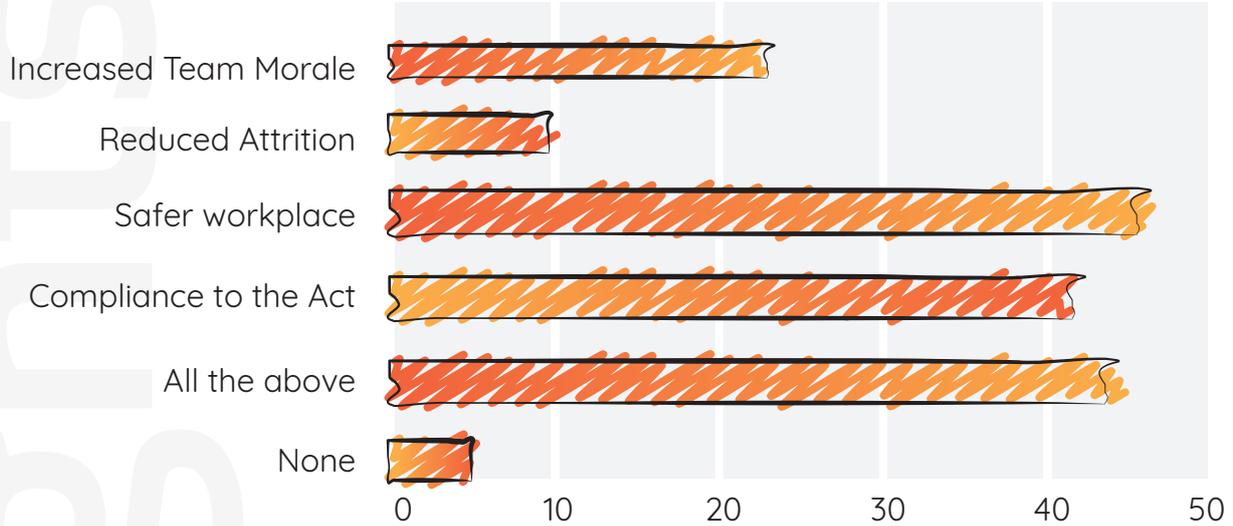


of the organisations, the Internal Committee handles the complaints raised by a male employee. That is in line with the PoSH Act.

20% HR as per Code of Conduct Policy

Benefits

Benefits of Sexual Harassment Act, 2013



10%

saw a reduction in attrition, a positive trend, given that many victims silently prefer to exit

5%

did not find this Act beneficial

Did the Act help in enhancing awareness among employees?



of the organisations believe that the Act helped in enhancing awareness amongst employees, which is a great trend.

No

May be

Complaints

Did you receive any complaints post training your employees?

55%



shared that they did not receive any complaints post the training.

KelpHR's Opinion: This could indicate that despite awareness the fear of reporting exists, which may be attributed to the company culture or the lack of trust in the Committee.

15%

Only verbal complaints

22%

Verbal and written complaints

8%

Anonymous complaints

Are anonymous complaints accepted in your organisation?

67%

accepted by PoSH Committee



33%

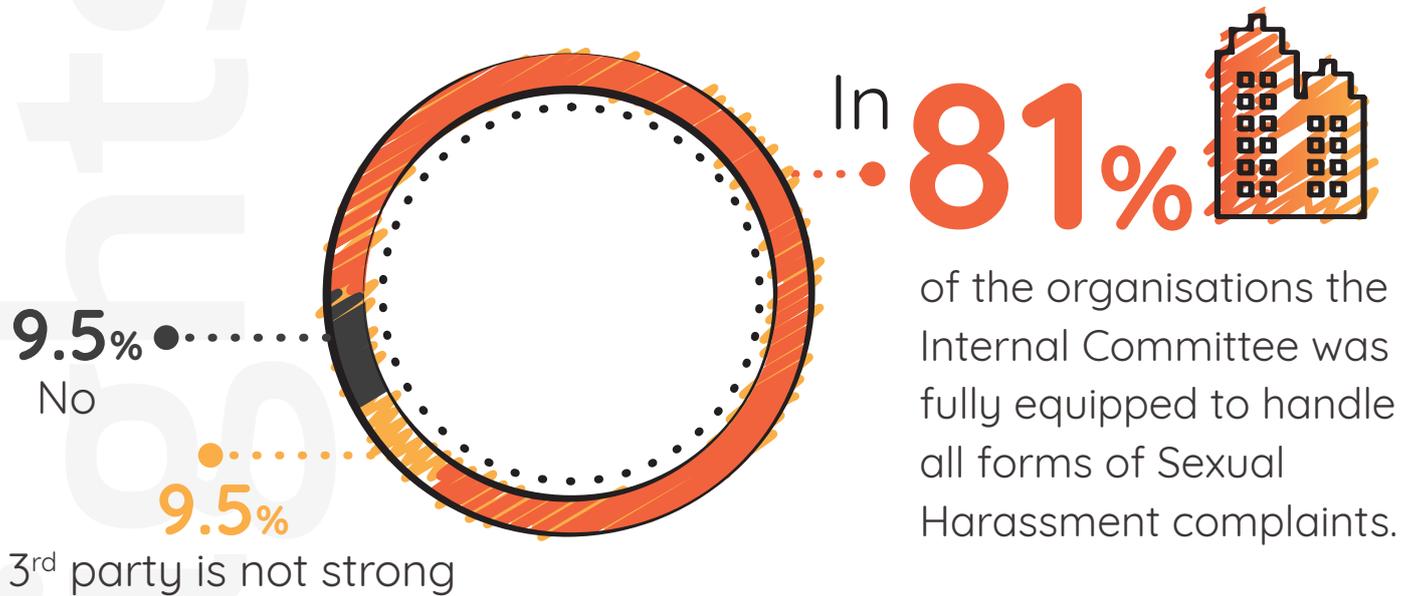
HR will investigate



KelpHR's opinion: Anonymous complaints help organisations to be aware of the incidents and instills confidence to victims to overcome their fear of reporting. Also, having complaint boxes in washrooms has been found to be more effective, as it guarantees privacy.

Forms of Harassment

Is your IC team, including 3rd party, fully equipped and trained to handle all forms of cases?



Common forms of Sexual Harassment

62%
Verbal

Verbal and non verbal forms of harassment are the top forms of harassment. That is followed by cases in the form of gossiping/rumours/hostile environment.

53%
Non verbal
Staring
Stalking

29%
Physical

24%
Social Media

14%
Written

10%
Quid Pro Quo

5%
Others

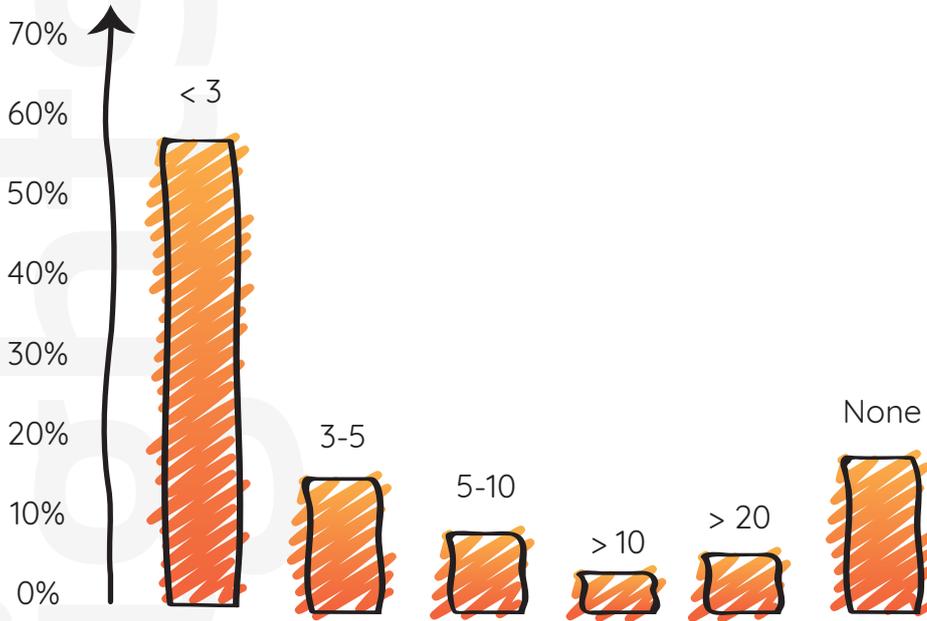
45%
Gossiping
Rumours

26%
Consensual
Relationships
Going Bad

KelpHR's Opinion: Social media related harassment (24%) in the form of Cyberstalking, Chat, misuse of Photos seems to be on the rise and employees need to be sensitized on this.

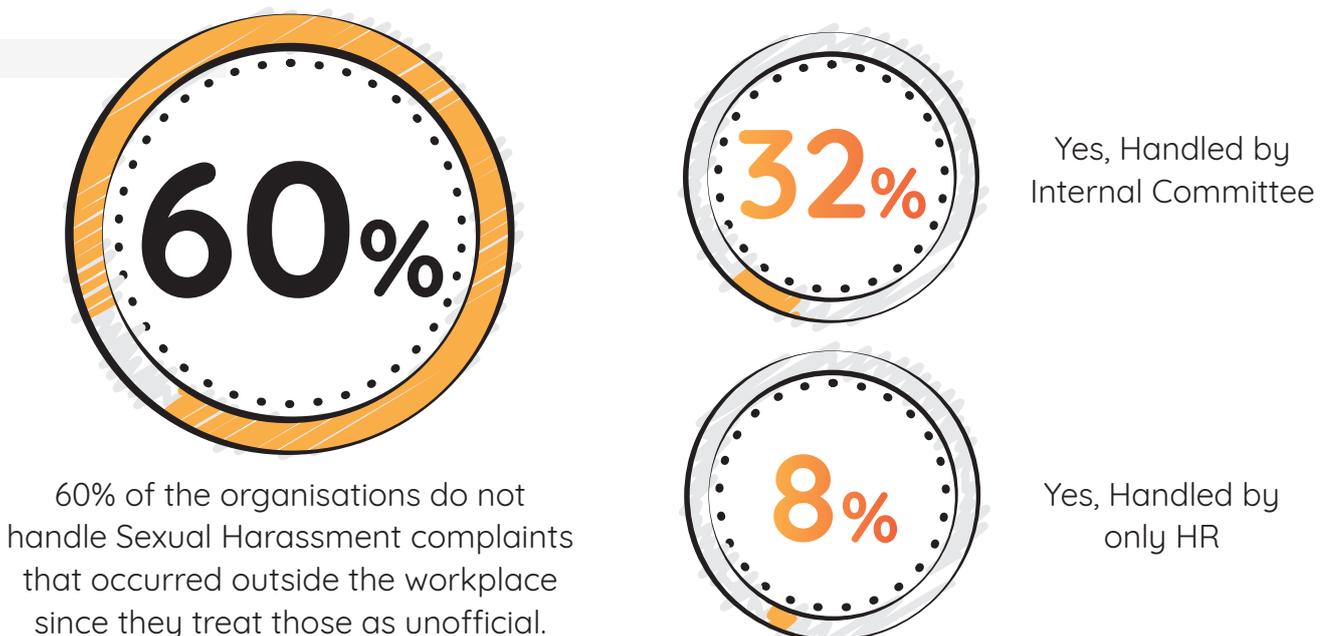
Workplace

How many cases are reported in a year at your workplace?



For **58%** of the companies, the number of cases reported in a year was less than 3. It could be that there were few incidents. But companies need to delve deeper to understand if the incidence is less or it is high and yet not being reported.

Do you handle Sexual Harassment complaints that occurred outside the workplace (unofficial)?



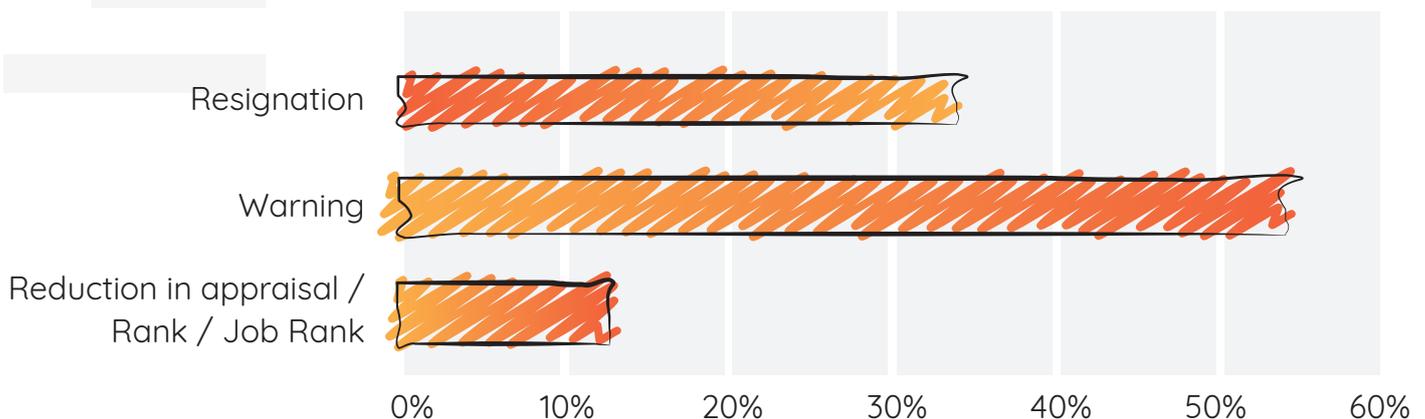
Malicious Complaints

Number of malicious complaints / false evidence received in a year



One key insight is that of the 10% that receive malicious complaints in the case of 5-10% of the cases, over 80% are from the IT/ITeS sector and of varying employee strengths.

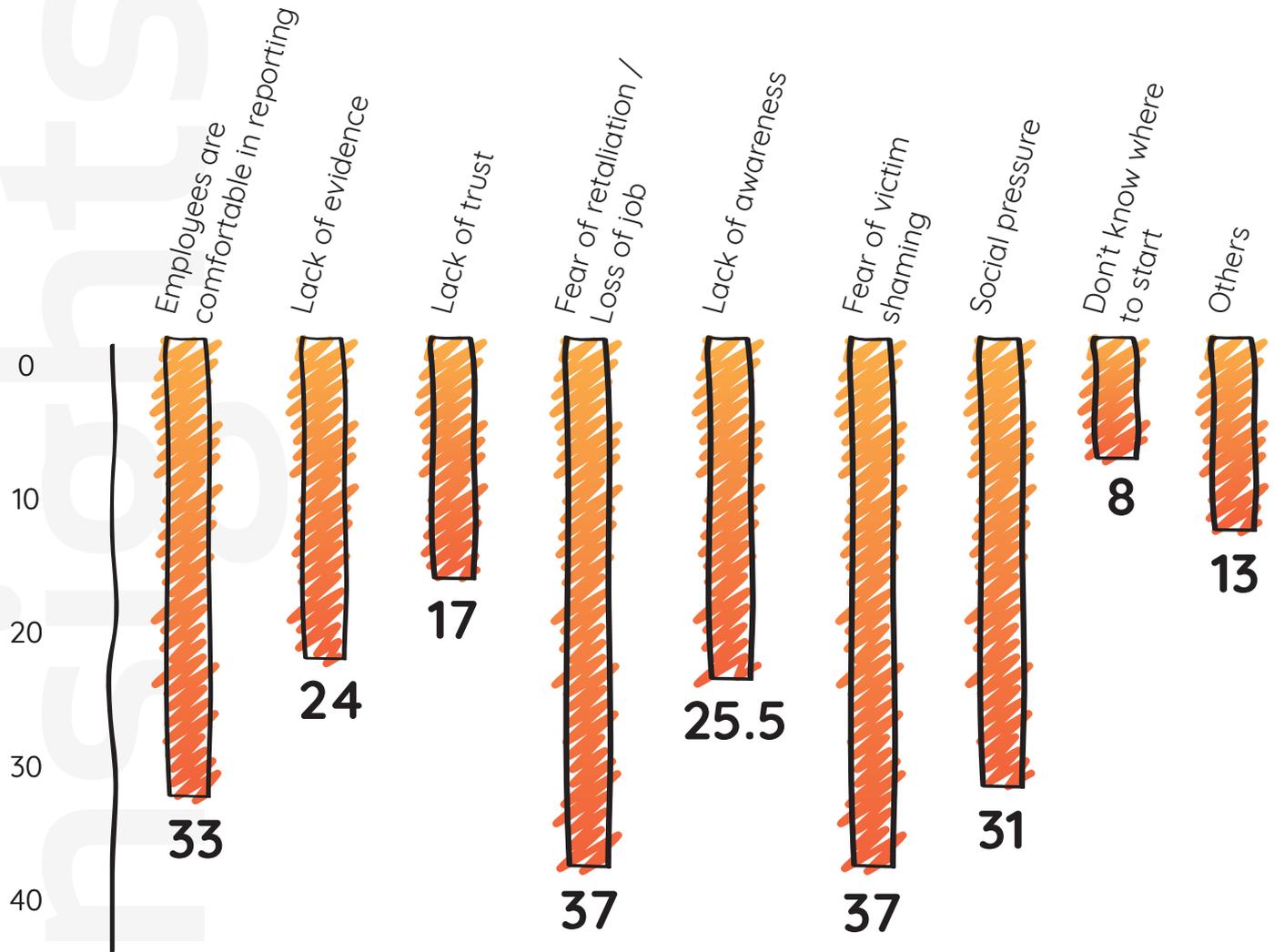
What action is taken if a complaint is proven false?



In more than half the respondents (54%) the false complainant is given a warning. The next most prevalent action is that the false complainant is asked to resign.

Not Reporting

Common reasons for not reporting incidents of Sexual Harassment



KelpHR's opinion: The top 2 reasons for not reporting incidents are fear of retaliation or loss of job, and the fear of victim shaming.

These fears are usually linked to the Company Culture and the level of confidence and trust on the Internal Committee. Having a strong and neutral Committee is a key for employees to report without fear.

Prevention

Preventive measures taken by your organisation to reduce Sexual Harassment complaints

71%



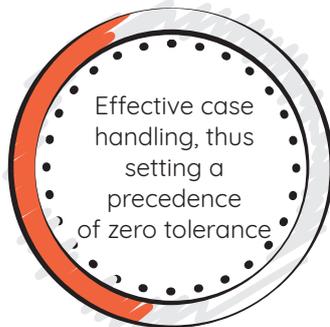
The reasons for non-reporting and link to culture seems to be evident to organisations too.

That is why in almost 71% of the organisations “Building a strong company culture” is the most common preventive measure taken to reduce such complaints.

68%



51%



41%



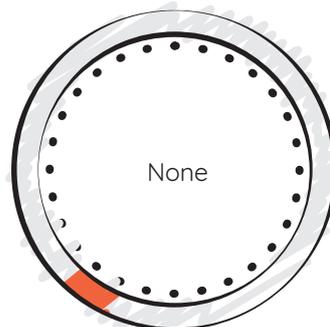
29%



55%

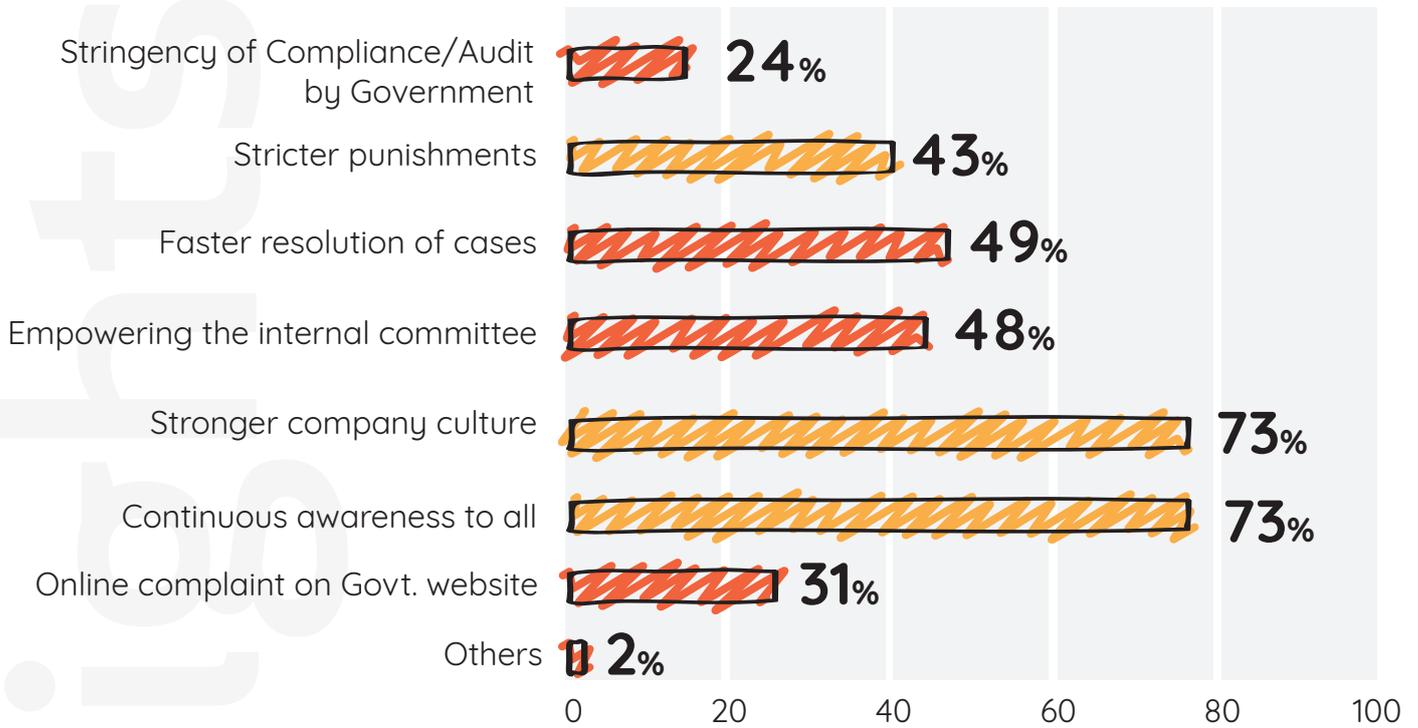


5%



Prevention

What can prevent Sexual Harassment at workplace?



KelpHR's Opinion: We have observed that Companies with Strong Culture, Continuous sensitization and a strong leadership team that exhibits zero tolerance are key to prevention.



Enhancements to the Act

What will make the Sexual Harassment Act, 2013 more comprehensive?

71%

Making the Act neutral

KelpHR's Opinion:

- It is always easy to get the male employees buy-in when the act is gender neutral. A need of the hour, considering 5% of male employees do undergo Sexual Harassment.

- A centralised filing of the annual report will avoid confusion on where to file the report and lead to better tracking of the number of incidents.

41%

Clarity on frequency of awareness sessions

30%

Clarity on the Annual report filing addresses

28%

Clarity on external member

46%

Clarity on definition of workplace / handling Off-duty incidents among employees

39%

Handling incidents based on evidences with no written complaints

29%

Better mechanism to track compliance and number of cases

11%

Others

Co-Founders

Smita C Kapoor



Smita has 20 plus years of work experience in the area of core Employee Relations, Training and Development, Grievance Redressal of complex work place issues including complaints of discrimination and Sexual Harassment, Conflict Resolution, Diversity and Inclusion Management, Mentoring and Employee Engagement activities.

She is currently the Co- Founder and Subject Matter Expert at KelpHR which offers HR Consultancy, Expertise on Prevention of Sexual Harassment, Diversity and Inclusion, Training & Development Programmes for Corporates. Smita sits on 15 IC committees as External Member

Viji Hari



Author of Behind Closed Cubicles, CEO and Co-Founder of a Human Resources Consultancy firm www.KelpHR.com and specializes in setting up governance models, prevention and redressal committees of Sexual Harassment, Diversity Offices in the corporate world.

With more than 18 years of Industry experience in MNC's across India and USA, She is a speaker in several forums on this topic and has conducted awareness workshops across India on the topic of Prevention of Sexual Harassment and Gender and Diversity sensitization. She is passionate about this topic and social causes pertaining to women and children.



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